

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

TUESDAY, THE 30TH JANUARY 2007 / 10TH MAGHA 1928

WP(C).No. 3175 of 2007(C)

PETITIONER:

K. SAJU KUMAR, RADIO OFFICER,
FISHERIES DEPARTMENT, MURUGHA BHAVANAM,
MANGATT, KOLLAM.

BY ADV. SRI.C.S.AJITH PRAKASH

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY ITS
SECRETARY, FISHERIES DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
2. THE DIRECTOR, DEPARTMENT OF FISHERIES
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
3. THE SUPERINTENDENT OF POLICE,
MARINE ENFORCEMENT WING,
FISHERIES DEPARTMENT, THIRUVANANTHAPURAM.
4. THE CHEIF GUARD, MARINE ENFORCEMENT WING
FISHERIES DEPARTMENT, THIRUVANANTHAPURAM.

BY GOVT. PLEADER SHRI. BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 30/01/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.K.DENESAN, J.

WP(C)No. 3175 OF 2007

Dated this the 30th January, 2007.

JUDGMENT

The petitioner was engaged as Radio Officer on daily wage basis with effect from 13.8.1999 as per Ext.P3 order dated 13.8.1999 passed by the Director of Fisheries. The last two paragraphs of Ext.P3 order are relevant in the context of the reliefs prayed for by the petitioner. Hence they are extracted below:-

"Under the above circumstances and considering the urgency and as Sri.Sajukumar, Muruka Bhavanam Mangad P.O.,Kollam is found qualified as prescribed in the G.O., the Director of Fisheries is pleased to post Sri.Sajukumar on daily wage basis with effect from 13.8.99 till an appointment is made on a regular basis as per the rules.

This posting will be purely on a temporary basis and the service will be terminated without any prior notice as and when it is found necessary. The expenditure on this posting will be met from the Head of Account 2405-00-103-99-Marine Fisheries-implementation of KMFR Act (Non plan) of the current years Budget provision."

The portion extracted above from Ext.P3 makes it clear that the petitioner has not been appointed to any post and he has no right to hold any post in the Fisheries Department. Though it is the discretion of the department to permit him to continue as such until appointment is made on a regular basis, it is equally open to the department to terminate

his services without any prior notice as and when found necessary.

2. Among other reliefs, the petitioner has sought for a writ of certiorari to quash Exts.P7 and P8. Ext.P7 is the communication sent by the Director of Fisheries on 4.11.2006 to the Superintendent of Police, Marine Enforcement, Thiruvananthapuram directing the latter to entrust the Chief Guard of Marine Enforcement Wing with the charge of all wireless sets under his control and to intimate the details of all wireless sets and equipments and all the computers and accessories under his control within a fortnight positively. It is seen from the endorsement made by the Superintendent of Police on Ext.P7 on 8.11.2006 that copy of the same was communicated to the petitioner who was engaged as Radio Officer and he was directed to prepare the list of wireless sets and equipments and hand over charge to Chief Guard and to submit a list to him. The petitioner contends that neither the Superintendent of Police (ME & V) nor the Chief Guard can be entrusted with the list of wireless sets and equipments since under the relevant provision of law they are not licensed persons to receive the same. Ext.P8 is letter written by the Superintendent of Police to the petitioner directing him to return back the mobile phone given to the petitioner since his service stood terminated

as Radio Officer. Ext.P8 letter was sent on 18.12.2006.

3. The petitioner submits that he had informed the Director of Fisheries that he will hand over the equipments to the Director of Fisheries. Similar is the contention taken by him as regards the mobile phone.

4. Besides challenging Exts.P7 & P8, the petitioner has prayed for a writ of mandamus directing the first respondent to issue appropriate orders allowing the petitioner to continue in service and discharge his duties as Radio Officer with fully charge till regular hands his appointed in the post.

5. Heard the learned counsel for the petitioner. Assuming that the Superintendent of Police or the Chief Guard is not the authority authorised to receive wireless equipments as contended by the petitioner, it is open to him to hand over those equipments to the Director of Fisheries. It is the case of the petitioner that he had informed the Director of Fisheries about his willingness to hand over the same. Hence nothing prevents him from doing so. The Director of Fisheries will receive the same from the custody of the petitioner provided they are handed over by the petitioner. If the petitioner has not so far handed over those equipments, he shall, as averred in this writ petition, hand over all those equipments and mobile phone to the Director of Fisheries forthwith. If that is done,

necessary acknowledgement shall be given by the Director of Fisheries to the petitioner for the receipt of those documents. Hence there is no necessity to examine whether this Court shall interfere with either Ext.P7 or Ext.P8.

6. As regards the relief sought for against the Government to instruct the authorities to permit the petitioner to continue in service, I feel that such a direction cannot be issued in the facts and circumstances of this case. As already noticed, the appointment order itself says that though the department may permit the petitioner to continue in service till regular hands join duty it is open to the department to terminate the services of the petitioner without any notice. Evidently the petitioner was on daily wages and it is open to the department to disengage such daily wage employee as the same will not contravene any statute or the terms of the appointment order. There is no provision of law which compels the department to continue to employ the petitioner. Even assuming that the post occupied by the petitioner is one to be manned by a person duly qualified and there is real necessity to have the services of a qualified person, that does not mean that the petitioner should be the only person who should occupy such a post. It is the privilege and freedom of the department to engage any other person on daily wage basis, if public interest so

requires. As long as the petitioner does not have the legal right to continue in employment, this Court will not direct the Government to continue to employ such persons. In fact, the continuance of daily wage employees as also provisional employees for long periods in service has been deprecated by the Hon'ble Supreme Court in **State of Karnataka v. Uma Devi** {2006(4) SCC 1}.

7. Counsel for the petitioner submits that the petitioner has made serious allegations of malafides against the respondents. I think it is not necessary to go into those details because allegations of malafides have no relevance, in the facts and circumstances of this case. The petitioner who has no legal right to the post will not get the right to work by alleging or establishing malafides. The mere existence of malafides will not improve his case and the same will not confer any right to him to continue in service.

In the light of the above facts and reasons, I find no ground to entertain this writ petition. Writ petition is therefore dismissed in limine.

K.K.DENESAN
Judge